

#### D. Remarks

The present application has been reviewed in light of the Office Action dated February 9, 2009, and the telephonic interview conducted with the Examiner on October 15, 2009. The following remarks are supplemental to those made in the Amendment filed on August 10, 2009.

##### 1. Status of the Claims

The claims are 1, 2, 8-11, 13-18, 20-25, 28-30 and 34, with claims 1, 2, 11, 24, and 34 being in independent form. Claims 7 and 12 have been cancelled without any prejudice or disclaimer of the subject matter presented therein. Claim 1, 2, 11, 24, 25, and 34 have been amended to define aspects of Applicants' invention more clearly. Support for the claim amendments may be found, for example, in claim 1, cancelled claim 7, and at page 7, lines 10-17 of the specification. Favorable reconsideration is respectfully requested.

##### 2. Rejections Under 35 U.S.C. § 112, Second Paragraph

As stated in the Interview Summary, Applicants note with appreciation that the amendment to claim 8 and the arguments presented in the Amendment filed on August 10, 2009, overcame the rejection of claims 8 and 12, 13, 16-18 and 23 under 35 U.S.C. §112, second paragraph.

##### 3. Rejections Over the Prior Art

###### A. Lambert

Claims 1 and 2 have been amended to include the size limitation of cancelled claim 7, namely, that the chopped fibre that is 1-7cm long. As stated in the Interview Summary, Applicants understand that such an amendment overcomes the rejection of claims 1, 2, 8 and 9 under 35 U.S.C. § 102(e) for allegedly being anticipated by Lambert et al. (U.S. Patent No. 6,284,265). Accordingly, withdrawal of this anticipation rejection is respectfully requested.

Claim 11 stands rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by, or alternatively under 35 U.S.C. § 103(a) as allegedly being obvious over, Lambert et al. (Office Action, pages 4-5). Applicants respectfully traverse.

Claim 11, as currently amended, is directed to a method of treatment or amelioration of animal stereotypy, or of minimizing the risk of an animal developing animal stereotypy, by administering a stomach antacid *before* the stereotypy becomes fixed. In addition to the case law and the arguments presented in the Amendment filed on August 10, 2009, it is respectfully submitted that Lambert does not disclose or suggest a link between stomach acidity and animal stereotypy, let alone the administration of a stomach antacid before the stereotypy becomes fixed. Accordingly, it is respectfully submitted that claim 11 is neither anticipated by Lambert nor is it obvious in view of Lambert

Claims 11-17, 23-25 and 28-30 stand rejected under 35 U.S.C. § 103(a) for allegedly being obvious over Lambert et al. (Office Action, pages 9-10). Applicants respectfully traverse.

Claims 12-17, 23, and 28-30 are patentable over Lambert at least because they depend from claim 11, which is allowable over Lambert, as argued above. Claims 24-25, as currently amended, recite treatment or amelioration of animal stereotypy, or of minimizing the risk of an animal developing stereotypy by minimizing or reducing ulcer formation, or treating ulcers *before* the stereotypy becomes fixed. Because there was no connection between ulcer formation and stereotypy taught in the prior art prior to Applicants' priority date, let alone minimizing or reducing ulcer formation or treating ulcers before the stereotypy becomes fixed, the claimed method is allowable for similar reasons as set forth above in connection with claim 11. In addition, claim 25, as currently amended, is limited to the administration of a specific

composition similar to the composition in claim 1, which the Examiner indicated was patentable in view of Lambert. Accordingly, it is respectfully submitted that claim 25 is patentable for this reason as well.

B. Winskill

Claims 17, 19, 28-30 and 34 stand rejected under 35 U.S.C. § 102(b) for allegedly being anticipated by or alternatively under 35 U.S.C. § 103(a) for allegedly being obvious over Winskill et al. (Applied Animal Behaviour Science vol. 48, pp. 25-35 (1996)) (Office Action, pages 5-6). Applicants respectfully traverse.

As explained to the Examiner during the interview, Winskill relates to the study of the foraging habit in horses and effect of Foodball on this habit. However, Winskill does *not* study the *stereotypic* behavior in horses. In fact, Winskill does not disclose administering a composition to an animal exhibiting stereotypy, and states that further research is needed to study the effect of Foodball on horses which perform stereotypic behavior. See Winskill, page 34, lines 4, 5, 10, and 11. In addition, the study of Winskill on the effect of Foodball on the foraging habit in horses who do not exhibit stereotypy, provided the horses with Foodball containing a high fibre pelleted diet for only five days. See Winskill, page 1, lines 9-10. Certainly, such a study can not be construed as a treatment or amelioration of animal stereotypy or minimization of the risk of the horse developing stereotypy. Accordingly, it is respectfully submitted that claims 17, 18, 28-30 and 34 are neither anticipated by Winskill nor are they obvious in view of Winskill.

Claims 12-17, 20-23, 28-30, and 34 stand rejected under 35 U.S.C. § 103(a) for allegedly being obvious over Winskill (Office Action, page 11). Applicants respectfully traverse.

Claims 11 and 34 are patentable over Winskill for the reasons stated above—that there is no teaching in the reference to treat or prevent stereotypy, let alone by administering a stomach antacid or the presently claimed composition *before* the stereotypy becomes fixed. The dependent claims are allowable at least by virtue of their dependency on these independent claims. Applicants submit that none of said claims can be deemed obvious where it was not known that stereotypy was related to the acidity of the intestinal tract.

C. Pagan

Claims 24 and 25 stand rejected under 35 U.S.C. § 102(a) for allegedly being anticipated by or alternatively under 35 U.S.C. § 103(a) for allegedly being obvious over Pagan (Australian Equine Journal vol. 16(4), pp. 159-161 (1998)) (Office Action, pages 6-7). Applicants respectfully traverse.

Pagan is related to the treatment and prevention of ulcers. However, as stated on page 7, lines 10-17 of the present specification, “once an animal has learnt a stereotypy, the stereotypic behaviour becomes fixed and the animal will perform the stereotypy even if the original cause of the behaviour has been removed.” Hence, even if ulcer is the underlying cause of the animal stereotypy and the ulcer has been treated, this does not necessarily mean that the animal stereotypy will be treated. In addition, as noted above, claims 24 and 25, as currently amended, recite treatment or amelioration of animal stereotypy, or of minimizing the risk of an animal developing stereotypy by minimizing or reducing ulcer formation *before* the stereotypy becomes fixed, which is neither disclosed nor suggested in Pagan. Accordingly, it is respectfully submitted that claims 24 and 25 are neither anticipated by nor are they obvious in view of Pagan.

D. Lambert in view of Brever

Claims 1, 2 and 7 stand under 35 U.S.C. § 103(a) for allegedly being obvious over Lambert et al. in view of Brever et al. (U.S. Patent No. 3,946,115) (Office Action, page 8). Applicants respectfully traverse.

The deficiencies of Lambert are discussed above. As explained in the arguments presented in the Amendment filed on August 10, 2009, Brever does not remedy the deficiencies of Lambert. There is no disclosure in Brever that the fibre present in the extruded horse feed includes chopped fibre that is about 1-7cm long, and so the combination of cited references does not render the claimed subject matter obvious.

E. Lambert in view of Pagan

Claims 1, 2, 9-11, 17 and 18 stand rejected under 35 U.S.C. § 103(a) for allegedly being obvious over Lambert et al. in view of Pagan (Office Action, pages 8-9). Applicants respectfully traverse.

As explained above, there is no disclosure in either Lambert or Pagan that at least some of the fibre present in the composition is chopped fibre that is 1-7cm long. Thus, there is no combination of the cited references that would render the subject matter unpatentable as obvious. With respect to claims 17 and 18, which depend from claims 11 (or 34), as discussed above, neither Lambert nor Pagan teaches the link between stomach acidity and stereotypy, let alone, treatment or amelioration of animal stereotypy, or minimizing the risk of an animal developing animal stereotypy, by administering a stomach antacid *before* the stereotypy becomes fixed. The subject matter of these dependent claims, relating to specific means of controlling stomach pH, is not made obvious by the combination of the two references.

### CONCLUSION

Wherefore, it is respectfully submitted that the presently claimed invention is not disclosed or suggested by the art of record whether taken alone or together. Accordingly, it is respectfully requested that the claims be allowed and the case passed to issue.

Applicants' undersigned attorney may be reached in our New York Office by telephone at (212) 218-2235 (direct) or (212) 218-2100 (main). All correspondence should continue to be directed to our address listed below.

Respectfully submitted,

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